

INTERNET  
FORM NLRB-501  
(2-08)UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
**CHARGE AGAINST EMPLOYER****DO NOT WRITE IN THIS SPACE**

Case

**20-CA-280184**

Date Filed

**07/20/2021****INSTRUCTIONS:**

File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

**1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT**

a. Name of Employer Vibra Hospital		b. Tel. No. (916) 351-9151
		c. Cell No.
		f. Fax No.
d. Address (Street, city, state, and ZIP code) 330 Montrose Drive CA Folsom 95630	e. Employer Representative	
	g. e-Mail	
	h. Number of workers employed 6000	
i. Type of Establishment (factory, mine, wholesaler, etc.) Healthcare Facilities	j. Identify principal product or service	
k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) 3,1,5 of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.		

**2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)**

--See additional page--

**3. Full name of party filing charge (if labor organization, give full name, including local name and number)**

(b) (6), (b) (7)(C)

Title:

**4a. Address (Street and number, city, state, and ZIP code)**

(b) (6), (b) (7)(C)

**4b. Tel. No.**

(b) (6), (b) (7)(C)

**4c. Cell No.**

(b) (6), (b) (7)(C)

**4d. Fax No.****4e. e-Mail**

(b) (6), (b) (7)(C)

**5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization)****6. DECLARATION**

I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

By



Michael Liebert

Title:

(signature of representative or person making charge)

(Print/type name and title or office, if any)

**Tel. No.**

(916) 530-2010

**Office, if any, Cell No.****Fax No.**

(916) 530-2011

**e-Mail**

mike@liebert-law.com

1750 Prairie City Road, Suite 130-153

07/20/2021 11:31:16 AM

Address Folsom CA 95630

(date)

**WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)****PRIVACY ACT STATEMENT**

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

## 8(a)(3)

Within the previous six months, the Employer discharged an employee(s) because the employee(s) joined or supported a labor organization and in order to discourage union activities and/or membership.

Name of employee discharged	Approximate date of discharge
(b) (6), (b) (7)(C)	(b) (6), (b) (7) /2021

## 8(a)(1)

Within the previous six months, the Employer discharged an employee(s) because the employee(s) engaged in protected concerted activities by, inter alia, protesting terms and conditions of employment and in order to discourage employees from engaging in protected concerted activities.

Name of employee discharged	Approximate date of discharge
(b) (6), (b) (7)(C)	(b) (6), (b) (7) /2021

## 8(a)(3)

Within the previous six months, the Employer disciplined or retaliated against an employee(s) because the employee(s) joined or supported a labor organization and in order to discourage union activities and/or membership.

Name of employee disciplined/retaliated against	Type of discipline/retaliation	Approximate date of discipline/retaliation
(b) (6), (b) (7)(C)	Harassment leading to Termination	(b) (6), (b) (7) /2021

## 8(a)(1)

Within the previous six months, the Employer disciplined or retaliated against an employee(s) because the employee(s) engaged in protected concerted activities by, inter alia, protesting terms and conditions of employment and in order to discourage employees from engaging in protected concerted activities.

Name of employee disciplined/retaliated against	Type of discipline/retaliation	Approximate date of discipline/retaliation
(b) (6), (b) (7)(C)	Harassment leading to Termination	(b) (6), (b) (7) 2021

## 8(a)(3)

Within the previous six months, the Employer refused to hire an employee(s) because the employee(s) joined or supported a labor organization and in order to discourage union activities or membership.

Name of employee refused hire	Approximate date of refusal to hire
(b) (6), (b) (7)(C)	(b) (6), (b) (7) /2021

## 8(a)(1)

Within the previous six months, the Employer refused to hire an employee(s) because the employee(s) engaged in protected concerted activities by, inter alia, protesting wages, hours, or other terms and conditions of employment and in order to discourage employees from engaging in protected concerted activities.

Name of employee refused hire	Approximate date of refusal to hire
(b) (6), (b) (7)(C)	(b) (6), (b) (7) /2021

**8(a)(1)**

Within the previous six-months, the Employer has interfered with, restrained, and coerced its employees in the exercise of rights protected by Section 7 of the Act by threatening to retaliate against employees if they joined or supported a union.

Name of Employer's Agent/Representative who made the statement	Approximate date
(b) (6), (b) (7)(C)	(b) (6), (b) (7) /2021

**8(a)(1)**

Within the previous six-months, the Employer has interfered with, restrained, and coerced its employees in the exercise of rights protected by Section 7 of the Act by interrogating employees about their union activities.

Name of Employer's Agent/Representative who made the statement	Approximate date
(b) (6), (b) (7)(C)	(b) (6), (b) (7) /2021

**8(a)(5)**

Within the previous six months, the Employer failed and refused to recognize the union as the collective bargaining representative of its employees.

**8(a)(5)**

Within the previous six months, the Employer failed and refused to bargain in good faith with the union as the collective bargaining representative of its employees.



UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD

REGION 20  
901 Market Street, Suite 400  
San Francisco, CA 94103-1738

Agency Website: [www.nlrb.gov](http://www.nlrb.gov)  
Telephone: (415)356-5130  
Fax: (415)356-5156



Download  
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July 20, 2021

Vibra Hospital  
330 Montrose Drive  
Folsom CA 95630

Re: Vibra Hospital  
Case 20-CA-280184

Dear Sir or Madam:

Enclosed is a copy of a charge that has been filed in this case. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

**Investigator:** This charge is being investigated by Field Attorney JASON P. WONG whose telephone number is (628)221-8836. If this Board agent is not available, you may contact Supervisory Attorney JENNIFER BENESIS whose telephone number is (628)221-8846.

**Right to Representation:** You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing *Form NLRB-4701, Notice of Appearance*. This form is available on our website, [www.nlrb.gov](http://www.nlrb.gov), or from an NLRB office upon your request.

If you are contacted by someone about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board. Their knowledge regarding this proceeding was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

**Presentation of Your Evidence:** We seek prompt resolutions of labor disputes. Therefore, I urge you or your representative to submit a complete written account of the facts and a statement of your position with respect to the allegations set forth in the charge as soon as possible. If the Board agent later asks for more evidence, I strongly urge you or your representative to cooperate fully by promptly presenting all evidence relevant to the investigation. In this way, the case can be fully investigated more quickly.

Full and complete cooperation includes providing witnesses to give sworn affidavits to a Board agent, and providing all relevant documentary evidence requested by the Board agent. Sending us your written account of the facts and a statement of your position is not

enough to be considered full and complete cooperation. A refusal to fully cooperate during the investigation might cause a case to be litigated unnecessarily.

In addition, either you or your representative must complete the enclosed Commerce Questionnaire to enable us to determine whether the NLRB has jurisdiction over this dispute. If you recently submitted this information in another case, or if you need assistance completing the form, please contact the Board agent.

We will not honor requests to limit our use of position statements or evidence. Specifically, any material you submit may be introduced as evidence at a hearing before an administrative law judge regardless of claims of confidentiality. However, certain evidence produced at a hearing may be protected from public disclosure by demonstrated claims of confidentiality.

Further, the Freedom of Information Act may require that we disclose position statements or evidence in closed cases upon request, unless an exemption applies, such as those protecting confidential financial information or personal privacy interests.

**Preservation of all Potential Evidence:** Please be mindful of your obligation to preserve all relevant documents and electronically stored information (ESI) in this case, and to take all steps necessary to avoid the inadvertent loss of information in your possession, custody or control. Relevant information includes, but is not limited to, paper documents and all ESI (e.g. SMS text messages, electronic documents, emails, and any data created by proprietary software tools) related to the above-captioned case.

**Prohibition on Recording Affidavit Interviews:** It is the policy of the General Counsel to prohibit affiants from recording the interview conducted by Board agents when subscribing Agency affidavits. Such recordings may impede the Agency's ability to safeguard the confidentiality of the affidavit itself, protect the privacy of the affiant and potentially compromise the integrity of the Region's investigation.

**Correspondence:** All documents submitted to the Region regarding your case MUST be filed through the Agency's website, [www.nlr.gov](http://www.nlr.gov). This includes all formal pleadings, briefs, as well as affidavits, documentary evidence, and position statements. The Agency requests all evidence submitted electronically to be in the form it is normally used and maintained in the course of business (i.e., native format). Where evidence submitted electronically is not in native format, it should be submitted in a manner that retains the essential functionality of the native format (i.e., in a machine-readable and searchable electronic format).

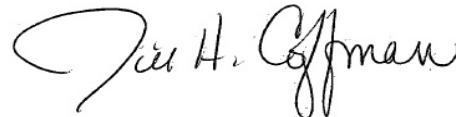
If you have questions about the submission of evidence or expect to deliver a large quantity of electronic records, please promptly contact the Board agent investigating the charge. If you cannot e-file your documents, you must provide a statement explaining why you do not have access to the means for filing electronically or why filing electronically would impose an undue burden.

In addition, this Region will be issuing case-related correspondence and documents, including complaints, compliance specifications, dismissal letters, deferral letters, and withdrawal letters, electronically to the email address you provide. Please ensure that you receive important case-related correspondence, please ensure that the Board Agent assigned to your case has your preferred email address. These steps will ensure that you receive correspondence faster and at a significantly lower cost to the taxpayer. If there is some reason you are unable to receive correspondence via email, please contact the agent assigned to your case to discuss the circumstances that prevent you from using email.

Information about the Agency, the procedures we follow in unfair labor practice cases and our customer service standards is available on our website, [www.nlr.gov](http://www.nlr.gov) or from an NLRB office upon your request. *NLRB Form 4541, Investigative Procedures* offers information that is helpful to parties involved in an investigation of an unfair labor practice charge.

We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,



---

JILL H. COFFMAN  
Regional Director

Enclosures:

1. Copy of Charge
2. Commerce Questionnaire

Copy of charge only sent to:

Bruce D. Bagley, Employer Representative  
Vibra Healthcare  
155 James Madison Drive  
Mechanicsburg PA 17050-9531



## QUESTIONNAIRE ON COMMERCE INFORMATION

Please read carefully, answer all applicable items, and return to the NLRB Office. If additional space is required, please add a page and identify item number.

CASE NAME

CASE NUMBER  
20-CA-280184

## 1. EXACT LEGAL TITLE OF ENTITY (As filed with State and/or stated in legal documents forming entity)

## 2. TYPE OF ENTITY

☐ CORPORATION ☐ LLC ☐ LLP ☐ PARTNERSHIP ☐ SOLE PROPRIETORSHIP ☐ OTHER (Specify )

## 3. IF A CORPORATION or LLC

A. STATE OF INCORPORATION  
OR FORMATION

B. NAME, ADDRESS, AND RELATIONSHIP (e.g. parent, subsidiary) OF ALL RELATED ENTITIES

## 4. IF AN LLC OR ANY TYPE OF PARTNERSHIP, FULL NAME AND ADDRESS OF ALL MEMBERS OR PARTNERS

## 5. IF A SOLE PROPRIETORSHIP, FULL NAME AND ADDRESS OF PROPRIETOR

## 6. BRIEFLY DESCRIBE THE NATURE OF YOUR OPERATIONS (Products handled or manufactured, or nature of services performed).

## 7A. PRINCIPAL LOCATION:

## 7B. BRANCH LOCATIONS:

## 8. NUMBER OF PEOPLE PRESENTLY EMPLOYED

A. TOTAL:

B. AT THE ADDRESS INVOLVED IN THIS MATTER:

9. DURING THE MOST RECENT (Check the appropriate box): ☐ CALENDAR ☐ 12 MONTHS or ☐ FISCAL YEAR (FY DATES \_\_\_\_\_)

YES

NO

A. Did you provide services valued in excess of \$50,000 directly to customers outside your State? If no, indicate actual value.  
\$ \_\_\_\_\_

B. If you answered no to 9A, did you provide services valued in excess of \$50,000 to customers in your State who purchased goods valued in excess of \$50,000 from directly outside your State? If no, indicate the value of any such services you provided. \$ \_\_\_\_\_

C. If you answered no to 9A and 9B, did you provide services valued in excess of \$50,000 to public utilities, transit systems, newspapers, health care institutions, broadcasting stations, commercial buildings, educational institutions, or retail concerns? If less than \$50,000, indicate amount. \$ \_\_\_\_\_

D. Did you sell goods valued in excess of \$50,000 directly to customers located outside your State? If less than \$50,000, indicate amount. \$ \_\_\_\_\_

E. If you answered no to 9D, did you sell goods valued in excess of \$50,000 directly to customers located inside your State who purchased other goods valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount. \$ \_\_\_\_\_

F. Did you purchase and receive goods valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount. \$ \_\_\_\_\_

G. Did you purchase and receive goods valued in excess of \$50,000 from enterprises who received the goods directly from points outside your State? If less than \$50,000, indicate amount. \$ \_\_\_\_\_

H. Gross Revenues from all sales or performance of services (Check the largest amount)

☐ \$100,000 ☐ \$250,000 ☐ \$500,000 ☐ \$1,000,000 or more If less than \$100,000, indicate amount.

I. Did you begin operations within the last 12 months? If yes, specify date: \_\_\_\_\_

## 10. ARE YOU A MEMBER OF AN ASSOCIATION OR OTHER EMPLOYER GROUP THAT ENGAGES IN COLLECTIVE BARGAINING?

☐ YES ☐ NO (If yes, name and address of association or group).

## 11. REPRESENTATIVE BEST QUALIFIED TO GIVE FURTHER INFORMATION ABOUT YOUR OPERATIONS

NAME

TITLE

E-MAIL ADDRESS

TEL. NUMBER

## 12. AUTHORIZED REPRESENTATIVE COMPLETING THIS QUESTIONNAIRE

NAME AND TITLE (Type or Print)

SIGNATURE

E-MAIL ADDRESS

DATE

## PRIVACY ACT STATEMENT

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**UNITED STATES OF AMERICA**  
**BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**VIBRA HOSPITAL**

Charged Party

and

(b) (6), (b) (7)(C)

Charging Party

**Case 20-CA-280184**

**AFFIDAVIT OF SERVICE OF CHARGE AGAINST EMPLOYER**

I, the undersigned employee of the National Labor Relations Board, state under oath that on July 20, 2021, I served the above-entitled document(s) by post-paid regular mail upon the following persons, addressed to them at the following addresses:

Vibra Hospital  
330 Montrose Drive  
Folsom CA 95630

July 20, 2021

Date

Caroline Barker, Designated Agent of NLRB

Name

/s/ Caroline Barker

Signature





UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD

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July 20, 2021

(b) (6), (b) (7)(C)

Re: Vibra Hospital  
Case 20-CA-280184

Dear (b) (6), (b) (7)(C)

The charge that you filed in this case on July 20, 2021 has been docketed as case number 20-CA-280184. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

**Investigator:** This charge is being investigated by Field Attorney JASON P. WONG whose telephone number is (628)221-8836. If this Board agent is not available, you may contact Supervisory Attorney JENNIFER BENESIS whose telephone number is (628)221-8846.

**Right to Representation:** You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing *Form NLRB-4701, Notice of Appearance*. This form is available on our website, [www.nlr.gov](http://www.nlr.gov), or from an NLRB office upon your request.

If you are contacted by someone about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board. Their knowledge regarding this proceeding was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

**Presentation of Your Evidence:** As the party who filed the charge in this case, it is your responsibility to meet with the Board agent to provide a sworn affidavit, or provide other witnesses to provide sworn affidavits, and to provide relevant documents within your possession. Because we seek to resolve labor disputes promptly, you should be ready to promptly present your affidavit(s) and other evidence. If you have not yet scheduled a date and time for the Board agent to take your affidavit, please contact the Board agent to schedule the affidavit(s). If you fail to cooperate in promptly presenting your evidence, your charge may be dismissed without investigation.

**Preservation of all Potential Evidence:** Please be mindful of your obligation to preserve all relevant documents and electronically stored information (ESI) in this case, and to take all steps necessary to avoid the inadvertent loss of information in your possession, custody or control. Relevant information includes, but is not limited to, paper documents and all ESI (e.g. SMS text messages, electronic documents, emails, and any data created by proprietary software tools) related to the above-captioned case.

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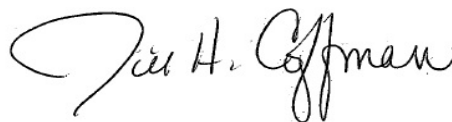
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We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,



---

JILL H. COFFMAN  
Regional Director

cc: Michael Liebert, Attorney  
Liebert Law  
1750 Prairie City Road  
Suite 130-153  
Folsom CA 95630



UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD

REGION 20  
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Agency Website: [www.nlr.gov](http://www.nlr.gov)  
Telephone: (415)356-5130  
Fax: (415)356-5156

Agent's Direct Dial: (628)221-8836

July 23, 2021

Vibra Hospital  
330 Montrose Drive  
Folsom, CA 95630

VIA EMAIL

Re: Vibra Hospital  
Case 20-CA-280184

Dear Glenda Franco or To Whom It May Concern

I am writing this letter to advise you that it is now necessary for me to take evidence from you regarding the allegations raised in the investigation of the above-referenced matter. Set forth below are the allegations and issues on which your evidence is needed, a request to take affidavits, a request for documentary evidence, and the date for providing your evidence.

**Allegations:** The allegations for which I am seeking your evidence are as follows. All days refer to the year 2021 unless otherwise noted.

The charge alleges that the Employer violated the National Labor Relations Act (Act) by terminating (b) (6), (b) (7)(C)) on (b) (6), (b) (7)(C)) due to (b) (6), (b) (7)(C)) Union activities and confronting the Employer in (b) (6), (b) (7)(C)) role as (b) (6), (b) (7)(C)). The Employer claims it terminated (b) (6), (b) (7)(C)) due to (b) (6), (b) (7)(C)) dishonesty concerning whether (b) (6), (b) (7)(C)) had been exposed to COVID, which the charge alleges to be untrue.

**Board Affidavits:** I am requesting to take affidavits from any individuals you believe have information relevant to the investigation of this matter. Please be advised that the failure to present representatives who would appear to have information relevant to the investigation of this matter, for the purposes of my taking sworn statements from them, constitutes less than complete cooperation in the investigation of the charge.

**Issues and Documents:** In addition to responding to the allegations above, please address the following issues and provide the following documents, along with any and all other evidence you deem to be relevant to the case:

1. Why did the Employer terminate (b) (6), (b) (7)(C))
2. Why did the Employer fail to discipline (b) (6), (b) (7)(C)) progressively before terminating (b) (6), (b) (7)(C))

3. In the last two years, has the Employer terminated any other employees for the same reasons it terminated (b) (6), (b) (7)(C) If yes, please provide documents showing the extent of the misconduct and corresponding disciplinary actions in those other cases.
4. Did the Union grieve (b) (6), (b) (7)(C) termination. If so, what is the current status of that grievance?

**Date for Submitting Evidence:** To resolve this matter as expeditiously as possible, you must provide your evidence and position in this matter by **August 2**. Pursuant to Section 102.5 of the Board's Rules and Regulations, parties must submit all documentary evidence, including statements of position, exhibits, sworn statements, and/or other evidence, by electronically submitting (E-Filing) them through the Agency's web site ([www.nlr.gov](http://www.nlr.gov)). You must e-file all documents electronically or provide a written statement explaining why electronic submission is not possible or feasible. Failure to comply with Section 102.5 will result in rejection of your submission. The Region will make its determination on the merits solely based on the evidence properly submitted.

Please contact me at your earliest convenience by telephone, (628)221-8836, or e-mail, [jason.wong@nlrb.gov](mailto:jason.wong@nlrb.gov), so that we can discuss how you would like to provide evidence and I can answer any questions you have with regard to the issues in this matter.

Very truly yours,

JASON P. WONG  
Field Attorney

**From:** [Bruce Harland](#)  
**To:** [Wong, Jason P](#)  
**Subject:** RE: (b) (6), (b) (7)(C)'s Charge against Vibra - who will rep the Union?  
**Date:** Monday, July 26, 2021 6:35:26 PM

---

Hello Jason,

The Union did file a grievance on behalf of (b) (6), (b) (7)(C). However, it determined that the grievance lacked merit. The Union then provided (b) (6), (b) (7)(C) an opportunity to appeal this decision to the Union's Appeal Panel. (b) (6), (b) (7)(C) did not show up to the Union Appeal Panel. As a result of (b) (6), no-show, the Union withdrew (b) (6) grievance. So there is no longer a pending grievance.

Please let me know if you have any questions.

Bruce

---

**From:** Wong, Jason P [mailto:Jason.Wong@nlrb.gov]  
**Sent:** Friday, July 23, 2021 11:37 AM  
**To:** Bruce Harland  
**Subject:** FW: (b) (6), (b) (7)(C) Charge against Vibra - who will rep the Union?

Bruce, please confirm that you will represent the union in this charge filed against the company. As you can see, the charging party alleges multiple violations, the most pressing being that (b) (6) was terminated for (b) (6) protected activity. I am in the process of obtaining (b) (6) evidence. The Region would greatly appreciate the union's cooperation in this investigation. First and foremost, did the union file a grievance concerning (b) (6) termination? If so, what is the current status of that grievance? Please let me know. Thank you.

---

**From:** Lorena Alvarez <lalvarez@seiu-uhw.org>  
**Sent:** Thursday, July 22, 2021 7:17 PM  
**To:** Wong, Jason P <Jason.Wong@nlrb.gov>  
**Cc:** Samantha L Green <sgreen@seiu-uhw.org>; Bruce Harland <bharland@seiu-uhw.org>  
**Subject:** Re: (b) (6), (b) (7)(C) Charge against Vibra - who will rep the Union?

Good Evening Jason,

You can Contact Bruce Harland. I have included him in this email.

Thank you,  
Lorena

Sent from my iPhone

On Jul 22, 2021, at 4:55 PM, Wong, Jason P <[Jason.Wong@nlrb.gov](mailto:Jason.Wong@nlrb.gov)> wrote:

Samantha and Lorena:

I have been assigned to investigate the attached charge that (b) (6), (b) (7)(C) has filed against Vibra Hospital. To clarify, the charge is against the employer, not the union. However, the union has information that will be helpful to the Region's investigation. Who will represent the union in this matter? Please provide me with their contact information, so I may communicate with them. Thank you.

-----  
Thank You,  
Jason Wong  
Field Attorney  
NLRB - Region 20  
901 Market Street, Suite 400  
San Francisco, CA 94103  
Phone: 628-221-8836  
Fax: 415-356-5156

**The NLRB now requires electronic filing of documents**, including affidavits, correspondence, position statements, and documentary or other evidence. This requirement does not apply to ULP charges, or to petitions and showings of interest in representation cases. See GC 20-01.

<https://apps.nlr.gov/link/document.aspx/09031d4582dfa410>

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<CHG.20-CA-280184.Original Signed Charge.pdf>



NATIONAL LABOR RELATIONS BOARD

NOTICE OF APPEARANCE

(b) (6), (b) (7)(C)

and  
Vibra Hospital of Sacramento, LLC

CASE 20-CA-280184

☒ REGIONAL DIRECTOR

☐ EXECUTIVE SECRETARY  
NATIONAL LABOR RELATIONS BOARD  
Washington, DC 20570

☐ GENERAL COUNSEL  
NATIONAL LABOR RELATIONS BOARD  
Washington, DC 20570

THE UNDERSIGNED HEREBY ENTERS APPEARANCE AS REPRESENTATIVE OF \_\_\_\_\_  
Vibra Hospital of Sacramento, LLC

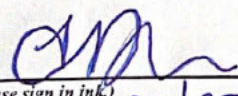
IN THE ABOVE-CAPTIONED MATTER.

CHECK THE APPROPRIATE BOX(ES) BELOW:

☒ REPRESENTATIVE IS AN ATTORNEY

☒ IF REPRESENTATIVE IS AN ATTORNEY, IN ORDER TO ENSURE THAT THE PARTY MAY RECEIVE COPIES OF CERTAIN DOCUMENTS OR CORRESPONDENCE FROM THE AGENCY IN ADDITION TO THOSE DESCRIBED BELOW, THIS BOX MUST BE CHECKED. IF THIS BOX IS NOT CHECKED, THE PARTY WILL RECEIVE ONLY COPIES OF CERTAIN DOCUMENTS SUCH AS CHARGES, PETITIONS AND FORMAL DOCUMENTS AS DESCRIBED IN SEC. 11842.3 OF THE CASEHANDLING MANUAL.

(REPRESENTATIVE INFORMATION)

NAME: Tara D. Gryan	
MAILING ADDRESS: 4600 Lena Drive, Mechanicsburg, PA 17055	
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SIGNATURE: 	
DATE: 07/27/21	

<sup>1</sup> IF CASE IS PENDING IN WASHINGTON AND NOTICE OF APPEARANCE IS SENT TO THE GENERAL COUNSEL OR THE EXECUTIVE SECRETARY, A COPY SHOULD BE SENT TO THE REGIONAL DIRECTOR OF THE REGION IN WHICH THE CASE WAS FILED SO THAT THOSE RECORDS WILL REFLECT THE APPEARANCE.



**RE:**

***Attachments to Vibra's Position Statement  
August 6, 2021  
Vibra Hospital of Sacramento  
Case 20-CA-280184***

Attachment 1	COVID-19 Policy and PPE Requirements
Attachment 2	Corrective Action - Termination (b) (6), (b) (7)(C) -21)
Attachment 3	COVID-19 Test Results and Screening Questions from Marshall Medical (01-22-21)
Attachment 4	Vibra COVID-19 Screening Questions from 01/17/21 to 01/28/21
Attachment 5	Termination Grievance Response (b) (6), (b) (7)(C) -21)
Attachment 6	Termination Grievance withdraw by SEIU-UHW (b) (6), (b) (7)(C) -21)
Attachment 7	Corrective Action for violation of COVID-19 screening process (b) (6), (b) (7)(C) -20)
Attachment 8	On-Call Hours (01-17-21 to 01-23-21)
Attachment 9	Timesheet Report (07-17-21 to 02-28-21)
Attachment 10	Email (b) (6), (b) (7)(C) Re: Appointment Incident (b) (6), (b) (7)(C) -20)
Attachment 11	Performance Management – Termination (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) -19)
Attachment 12	Grievance Withdrawal Re: Job Reclassification (b) (6), (b) (7)(C) -21)
Attachment 13	Grievance Withdrawal Re: Seniority/Pay Issues (b) (6), (b) (7)(C) -21)
Attachment 14	Email Re: New (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) -19)
Attachment 15	COVID-19 Huddle Update (07-29-20)
Attachment 16	Termination Grievance (b) (6), (b) (7)(C) -21)
Attachment 17	On-Call Hours (b) (6), (b) (7)(C)

Tara D. Gryan  
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August 6, 2021

**VIA EMAIL -** [jason.wong@nlrb.gov](mailto:jason.wong@nlrb.gov)

Jason P. Wong, Field Attorney  
National Labor Relations Board  
Region 20  
901 Market Street, Suite 400  
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**RE: Vibra Hospital of Sacramento  
Case 20-CA-280184**

Dear Mr. Wong:

I write in response to the allegations referenced in the above-captioned Charge filed (b) (6), (b) (7)(C) on behalf of Vibra Hospital of Sacramento (“Vibra”). On July 30, 2021 I requested more information as it relates to (b) (6), (b) (7)(C) allegations. Below I address Vibra’s position relating to the unlawful discharge allegation in violation of Section 8[a][3] of the Act.

Vibra and Service Employees International Union – United Healthcare Workers West (“SEIU-UHW”) are parties to a one-year collective bargaining agreement (the “CBA”) with a term of June 1, 2020 to May 31, 2021. (b) (6), (b) (7)(C) was hired by Vibra on (b) (6), (b) (7)(C) as a (b) (6), (b) (7)(C). At the time of (b) (6), (b) (7)(C) termination (b) (6), (b) (7)(C) was a (b) (6), (b) (7)(C) and as such, (b) (6), (b) (7)(C) was responsible for direct patient care. In addition, (b) (6), (b) (7)(C) was a (b) (6), (b) (7)(C) for close to two years, from (b) (6), (b) (7)(C) 2019 until (b) (6), (b) (7)(C) termination for just cause on (b) (6), (b) (7)(C) 2021.

(b) (6), (b) (7)(C) alleges that (b) (6), (b) (7)(C) was terminated due to (b) (6), (b) (7)(C) Union activities and for confronting Vibra in (b) (6), (b) (7)(C) role as (b) (6), (b) (7)(C). (b) (6), (b) (7)(C) allegations are without merit. (b) (6), (b) (7)(C) was terminated in accordance with the provisions of the CBA and company policy for documented dishonesty.

**Why did the Employer terminate (b) (6), (b) (7)(C)**

(b) (6), (b) (7)(C) was terminated for dishonesty and violations of Vibra’s COVID-19 protocols. Vibra is a specialty hospital known as a long-term acute care hospital (“LTACH”). LTACHs specialize in treating individuals who require an extended period of time for recovery in a hospital setting. LTACH patients have very complex medical needs. Thus, stringent COVID-19 protocols are a necessity for the safety of the seriously ill patients and the staff.

On January 25, 2021, Vibra began weekly COVID-19 testing of all employees in accordance with the mitigation plan submitted to the California Department of Public Health (CDPH). As of January 28, 2021, (b) (6), (b) (7)(C) had not taken Vibra's weekly COVID-19 test. In lieu of taking the onsite COVID-19 test, (b) (6), (b) (7)(C) voluntarily elected to provide (and the Employer agreed to accept) a copy of (b) (6), (b) (7)(C) COVID-19 results from (b) (6), (b) (7)(C) other employer, Marshall Medical Center ("Marshall"). On (b) (6), (b) (7)(C) 2021, (b) (6), (b) (7)(C) provided Vibra with a copy of the results from a test taken on January 22, 2021 at 11:17 p.m.

Included with (b) (6), (b) (7)(C) test results from Marshall, was documentation showing that (b) (6), (b) (7)(C) was, in fact, exposed to a COVID-19 positive patient on January 18, 2021. (b) (6), (b) (7)(C) indicated to Marshall that subsequent to (b) (6), (b) (7)(C) exposure (b) (6), (b) (7)(C) was experiencing COVID-19 symptoms (b) (6), (b) (7)(C) beginning on January 19, 2021. Of critical importance, (b) (6), (b) (7)(C) was dishonest and did *not* report experiencing any COVID-19 symptoms to Vibra during this same time period and continued to report to work at Vibra. Additionally, this placed the vulnerable patients and (b) (6), (b) (7)(C) co-workers in danger during the height of the COVID-19 pandemic before a vaccine was generally available. Specifically, (b) (6), (b) (7)(C) acknowledged in writing to Vibra on twelve consecutive days (01/17/21, 01/18/21, 01/19/21, 01/20/21, 01/21/21, 01/22/21, 01/23/21, 01/24/21, 01/25/21, 01/26/21, 01/27/21, and 01/28/21) that (b) (6), (b) (7)(C) was *not* experiencing any of the following symptoms: *new or worsening cough, new or worsening shortness of breath, close contact with a person with COVID-19 in the past 14 days, loss of taste or smell, fever, chills, fatigue/muscle pain, sore throat, headache, nausea, vomiting, or diarrhea.*

(b) (6), (b) (7)(C) termination for (b) (6), (b) (7)(C) dishonest and reckless behavior was for just cause pursuant to the CBA and Vibra's *COVID-19 Policy and Personal Protective Equipment (PPE) Requirements*. According to the Policy, "[a]ll employees are screened with a questionnaire, including symptoms, exposures, and temperatures prior to starting the shift...[and] employees will notify [their] supervisor immediately should they start experiencing any symptoms." Moreover, the Policy placed employees on notice that "failure to follow policy will result in disciplinary action."

According to Section 14.1 of the CBA: "[t]he Employer has to right to *immediately discharge* any employee for just cause without prior warning for *proven dishonesty*, insubordination, insobriety (as a result of alcohol or drug use), willful negligence, or proven patient abuse...this list is not intended to be exclusive of those offenses that justify immediate discharge." (Emphasis added).

### **Why did the Employer fail to discipline (b) (6), (b) (7)(C) progressively before terminating (b) (6), (b) (7)(C)**

Immediate discharge is permitted under the terms of the CBA for "proven dishonesty" such as is the case with (b) (6), (b) (7)(C), particularly because of (b) (6), (b) (7)(C) work with a vulnerable patient population. Vibra gathered written documentation proving (b) (6), (b) (7)(C) dishonest behavior in the form of (b) (6), (b) (7)(C) written responses to the daily Vibra COVID-19 screening questions from January 17<sup>th</sup> through January 28<sup>th</sup> where (b) (6), (b) (7)(C) indicates no symptoms or exposure. This can be compared with

(b) (6), (b) (7)(C) Marshall COVID-19 screening on January 21<sup>st</sup> where (b) (6) confirms symptoms of COVID-19 beginning January 19<sup>th</sup> along with exposure to a COVID-19 positive person on January 18<sup>th</sup>. Negating any claim of pretext is the undisputed fact that Vibra did not seek out any of this information; (b) (6), (b) (7)(C) voluntarily provided (b) (6), (b) (7)(C) results to Vibra to avoid having to take another COVID-19 test. Management neither displayed nor directed any animus toward (b) (6), (b) (7)(C) in (b) (6), (b) (7)(C) role as (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) role of (b) (6), (b) (7)(C) was of no consequence when Vibra terminated (b) (6), (b) (7)(C) for just cause.

The discharge was not (b) (6), (b) (7)(C) first disciplinary action related to (b) (6), (b) (7)(C) deliberate failure to comply with Vibra's COVID-19 protocols. On (b) (6), (b) (7)(C) 2020, (b) (6), (b) (7)(C) was disciplined for violation of COVID-19 procedures by entering through a backdoor of the hospital to avoid going through the COVID-19 screening process.<sup>1</sup> According to the corrective action form,

(b) (6), (b) (7)(C) is expected/required to consistently follow and comply with the current hospital guidelines for screening when entering the building for the start of (b) (6), (b) (7)(C) shift. These guidelines for screening were reviewed with (b) (6), (b) (7)(C). It was discussed with (b) (6), (b) (7)(C) that our county of Sacramento is in a period of high alert and Patient and staff safety are a high concern, therefore everyone must exercise compliance with the guidelines. Any further or continued failure to follow the hospital guidelines for screening can lead to further disciplinary action up to and including termination.

(b) (6), (b) (7)(C) was aware of the COVID-19 protocols, (b) (6), (b) (7)(C) was put on notice that (b) (6), (b) (7)(C) must comply with COVID-19 screening process going forward, and further infractions would lead to discipline, including termination. Yet, approximately six (6) months later, (b) (6), (b) (7)(C) again violated the COVID-19 protocols by lying on (b) (6), (b) (7)(C) questionnaire on multiple occasions.

**In the last two years, has the Employer terminated any other employees for the same reasons it terminated (b) (6), (b) (7)(C)? If yes, please provide documents showing the extent of the misconduct and corresponding disciplinary actions in those other cases.**

While Vibra has not terminated any other employees for the unique circumstances under which (b) (6), (b) (7)(C) was terminated, a (b) (6), (b) (7)(C) was terminated for dishonesty and working off the clock in (b) (6), (b) (7)(C) 2019. While not disciplinary in nature, (b) (6), (b) (7)(C) ((b) (6), (b) (7)(C)) was discharged in (b) (6), (b) (7)(C) 2021 because (b) (6), (b) (7)(C) would not agree to be vaccinated or to submit to weekly COVID-19 testing due to a sincerely held belief. (b) (6), (b) (7)(C) was given a leave of absence as a reasonable accommodation. It was determined that any further absence for an indeterminate length of time would be an undue hardship on the organization.

**Did the Union grieve (b) (6), (b) (7)(C) termination? If so, what is the current status of that grievance?**

The Union filed a grievance on (b) (6), (b) (7)(C) 2021 on (b) (6), (b) (7)(C) behalf relating to (b) (6), (b) (7)(C) termination. Vibra denied the grievance in its entirety on (b) (6), (b) (7)(C) 2021. The Union declined

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<sup>1</sup> (b) (6), (b) (7)(C) grieved the discipline and it was reduced to a verbal reprimand.

to further pursue (b) (6), (b) (7)(C) grievance and submitted a written withdrawal of the grievance on (b) (6), (b) (7)(C) 2021.

Vibra completed a thorough investigation relating to (b) (6), (b) (7)(C) misconduct. The ultimate decision to terminate (b) (6), (b) (7)(C) was made by the (b) (6), (b) (7)(C) after discussion with the management team. The decision was made only after careful consideration of the evidence gathered by Vibra including an interview with (b) (6), (b) (7)(C) along with documentation proving (b) (6), (b) (7)(C) dishonesty including (b) (6), (b) (7)(C) timesheets, on-call forms, Vibra COVID-screening questionnaires, and COVID testing documentation from Marshall (all of which are being provided). (b) (6), (b) (7)(C) was interviewed as part of this investigation by telephone with (b) (6), (b) (7)(C) union representative present on (b) (6), (b) (7)(C) 2021 (referenced in the Corrective Action Form dated (b) (6), (b) (7)(C) 2021). During an investigative meeting on (b) (6), (b) (7)(C) 2021 and the grievance meeting with the Union on (b) (6), (b) (7)(C) 2021, (b) (6), (b) (7)(C) had the opportunity to engage in a dialog and provide exculpatory documents. (b) (6), (b) (7)(C) refused to do so. During the (b) (6), (b) (7)(C) grievance, (b) (6), (b) (7)(C) claimed to have written statements from a supervisor at Marshall to support (b) (6), (b) (7)(C) point and prove that (b) (6), (b) (7)(C) was not dishonest while completing Vibra's COVID-19 screening questionnaire. However, (b) (6), (b) (7)(C) refused to provide those statements or any other documents to support (b) (6), (b) (7)(C) argument. Despite expressly requesting a copy of these documents from (b) (6), (b) (7)(C), no documents were ever provided to Vibra.<sup>2</sup>

In addition to (b) (6), (b) (7)(C) termination grievance, (b) (6), (b) (7)(C) had two outstanding grievances at the time of (b) (6), (b) (7)(C) termination regarding (1) job reclassification; and (2) seniority/pay concerns. The Union withdrew these grievances on (b) (6), (b) (7)(C) 2021. The Union could have pursued these grievances along with (b) (6), (b) (7)(C) termination grievance, but for reasons unbeknownst to Vibra, it declined to do so. Vibra had no reason at the time to believe these grievances would not be pursued by the Union.

(b) (6), (b) (7)(C) alleges that in either (b) (6), (b) (7)(C) 2020 or early (b) (6), (b) (7)(C) 2021, the Employer terminated (b) (6), (b) (7)(C) for allegedly engaging in misconduct during a workers compensation exam at Mercy Health. (b) (6), (b) (7)(C) states that the ER ultimately rescinded the termination after the Union grieved it. Please provide your client's account of that termination.

(b) (6), (b) (7)(C) was never terminated before (b) (6), (b) (7)(C) 2021. (b) (6), (b) (7)(C) has raised an incident for which no adverse action was taken against (b) (6), (b) (7)(C) and in which (b) (6), (b) (7)(C) behaved inappropriately. On November 30, 2020, (b) (6), (b) (7)(C) was rude and belligerent with the staff at Mercy Occupational

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<sup>2</sup> Through responding to this Charge, counsel for Vibra was provided with a copy of a (b) (6), (b) (7)(C) 2021 letter from (b) (6), (b) (7)(C) at Marshall. Upon further investigation and discussion with leadership of Vibra, this letter was *never* provided to Vibra by (b) (6), (b) (7)(C) or by the Union. Perhaps (b) (6), (b) (7)(C) did not provide Vibra the letter from (b) (6), (b) (7)(C) because it further confirms (b) (6), (b) (7)(C) dishonesty. According to the letter, (b) (6), (b) (7)(C) reported to Marshall on January 22 that (b) (6), (b) (7)(C) was experiencing COVID-19 symptoms; however, on that same date (b) (6), (b) (7)(C) reported to work at Vibra and lied on (b) (6), (b) (7)(C) questionnaire by indicating (b) (6), (b) (7)(C) had no COVID-19 symptoms. In addition, (b) (6), (b) (7)(C) worked at Vibra and indicated that (b) (6), (b) (7)(C) was symptom-free on January 18, 19, 20, and 21 *after* (b) (6), (b) (7)(C) COVID exposure and before (b) (6), (b) (7)(C) was tested.



Health during an appointment for (b) (6), (b) (7)(C) workers' compensation injury. An email from the SEIU (b) (6), (b) (7)(C) for Mercy Medical Group was sent to management at Vibra stating that (b) (6), (b) (7)(C) was "very rude and belligerent," "hostile and angry," and that "(b) (6), (b) (7)(C) is not welcome at our clinic and will be asked to leave if (b) (6), (b) (7)(C) does show up." (b) (6), (b) (7)(C) was not terminated or even disciplined for this conduct. Thus, no grievance was filed. However, because of (b) (6), (b) (7)(C) misbehavior, Mercy refused to see (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) was sent to Kaiser Occupational Health going forward.

Around this same timeframe, (b) (6), (b) (7)(C) was on an approved leave of absence for a (b) (6), (b) (7)(C). (b) (6), (b) (7)(C) had the following restrictions from (b) (6), (b) (7)(C) treating physician that prohibited (b) (6), (b) (7)(C) from performing the essential functions of (b) (6), (b) (7)(C) job as a (b) (6), (b) (7)(C) standing, walking, sitting, bending, lifting/carrying/pushing/pulling. Vibra properly determined that (b) (6), (b) (7)(C) medical restrictions could not be accommodated and (b) (6), (b) (7)(C) was placed on an approved leave of absence. (b) (6), (b) (7)(C) did not lose any compensation during this time. The Union never filed a grievance regarding this issue. As seems often to be the case with (b) (6), (b) (7)(C), (b) (6), (b) (7)(C) was not forthcoming with (b) (6), (b) (7)(C) employer regarding (b) (6), (b) (7)(C) restrictions. In fact, (b) (6), (b) (7)(C) came to work against (b) (6), (b) (7)(C) doctor's orders and did not initially provide Vibra with the note taking (b) (6), (b) (7)(C) off work. However, (b) (6), (b) (7)(C) was not terminated, it was not grieved, and it was not rescinded.

**Provide documents showing your client's policy to employees that defines the term "exposed to COVID" (i.e. handbooks, leaflets, emails, etc.).**

The Vibra COVID-19 screening log signed by employees asks, "Have you been in close contact with a person with COVID-19 in the past 14 days?" Close contact is further defined as "being within approximately 6 feet (2 meters) for a prolonged period of time; close contact can occur while caring for, living with, -or- (b) (6), (b) (7)(C) having direct contact with infectious secretions (e.g., being coughed on) if such contact occurs while not wearing recommended personal protective equipment or PPE (e.g., gowns, gloves, NIOSH-certified disposable N95 respirator, eye protection." The testing form from Marshall indicates (b) (6), (b) (7)(C) was not only tested for exposure, but also for the symptoms (b) (6), (b) (7)(C) was experiencing at the time. The exposure, although important, is not the sole basis of (b) (6), (b) (7)(C) dishonesty.

(b) (6), (b) (7)(C) claims that even though your client was contractually required to pay (b) (6), (b) (7)(C) on 1/23/21 starting at 1:43am because (b) (6), (b) (7)(C) supervisor began working a shift at that time, (b) (6), (b) (7)(C) did not physically report to work until about 8am on 1/23/21. If this is true, (b) (6), (b) (7)(C) termination notice incorrectly states that (b) (6), (b) (7)(C) reported to work at VHS 2.5 hours after (b) (6), (b) (7)(C) Marshall COVID test. How does your client respond to this?

According to (b) (6), (b) (7)(C) timesheet and On-Call Hours Form, (b) (6), (b) (7)(C) worked and was paid for call back time on January 23, 2021 from 1:43 a.m. to 2:06 a.m. and (b) (6), (b) (7)(C) also worked on January 23<sup>rd</sup> from 7:32 a.m. until 12:55 p.m. There is no contractual obligation to pay an employee for call back time if (b) (6), (b) (7)(C) does not physically report to the building for work. The way it is supposed to work, if an employee is "on call" and the employee comes in for a "call back," Vibra deducts the "call back" time from the "on call" time so the employee does not get paid twice. If (b) (6), (b) (7)(C) did not, in fact, report to the building at 1:43 a.m. on January 23<sup>rd</sup> that may have been deemed theft of time

and another instance of dishonesty of which Vibra is just learning. Moreover, even assuming *arguendo* more time elapsed between the COVID-19 test and reporting to work at Vibra, it does not change the fact that (b) (6), (b) (7)(C) did not honestly complete the questionnaire or inform Vibra of (b) (6), (b) (7)(C) COVID-19 exposure and symptoms.

(b) (6), (b) (7)(C) has submitted additional evidence to support (b) (6), (b) (7)(C) claim of Employer animus towards (b) (6), (b) (7)(C) union activities. (b) (6), (b) (7)(C) claims that soon after (b) (6), (b) (7)(C) became (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) began to regularly interrogate (b) (6), (b) (7)(C) about (b) (6), (b) (7)(C) timecard and required (b) (6), (b) (7)(C) to handwrite and submit (b) (6), (b) (7)(C) work hours to (b) (6), (b) (7)(C) every week while no other employee was required to do so. How does your client respond to this claim?

(b) (6), (b) (7)(C) has been the (b) (6), (b) (7)(C) since (b) (6), (b) (7)(C) 2020. Prior to (b) (6), (b) (7)(C) was the (b) (6), (b) (7)(C) beginning in (b) (6), (b) (7)(C) 2018. In February 2020 there was an issue with the accuracy of the On-Call Hours forms from employees in the Radiology Department, not specific to (b) (6), (b) (7)(C). All employees who were on call and came into work were required to complete a handwritten On-Call Hours form to ensure correct pay. (b) (6), (b) (7)(C) handwritten form along with that of another employee are being provided to demonstrate (b) (6), (b) (7)(C) was not singled out. (b) (6), (b) (7)(C) was completing the On-Call Hours form incorrectly and, as a result, was experiencing issues with not being correctly paid for "call back" time, requiring numerous payroll corrections. (b) (6), (b) (7)(C) was instructed to complete the forms correctly to avoid mistakes in (b) (6), (b) (7)(C) pay. (b) (6), (b) (7)(C) never regularly interrogated (b) (6), (b) (7)(C) about (b) (6), (b) (7)(C) timecards or required anything different from (b) (6), (b) (7)(C) than for other on-call employees.

Based upon the above, it should be clear that this ULP Charge has no merit. (b) (6), (b) (7)(C) was terminated for just cause for reasons wholly unrelated to (b) (6), (b) (7)(C) role as a (b) (6), (b) (7)(C) – a role in which Vibra and (b) (6), (b) (7)(C) worked together for several years. We therefore respectfully request that the Regional Director dismiss this Charge in its entirety at the earliest possible time.

Sincerely,

VIBRA HOSPITAL OF SACRAMENTO

By



Tara DiRocco Gryan



Tara D. Gryan  
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August 19, 2021

**VIA EMAIL - [jason.wong@nlrb.gov](mailto:jason.wong@nlrb.gov)**

Jason P. Wong, Field Attorney  
National Labor Relations Board  
Region 20  
901 Market Street, Suite 400  
San Francisco, CA 94103-1738

**RE: Vibra Hospital of Sacramento  
Case 20-CA-280184**

Dear Mr. Wong:

The following serves as Vibra's Supplemental Position Statement pursuant to emails dated August 11 and August 13 seeking additional information as it relates to (b) (6), (b) (7)(C) Charge.<sup>1</sup>

1. You state that a (b) (6), (b) (7)(C) was terminated for dishonesty and working off the clock in (b) (6), (b) (7)(C) 2019. What was (b) (6), (b) (7)(C) dishonest about? Was (b) (6), (b) (7)(C) progressively disciplined or immediately discharged? Please provide (b) (6), (b) (7)(C) paperwork.

The termination paperwork for (b) (6), (b) (7)(C) was provided in the August 6 Position Statement at Attachment 11. Consistent with Vibra Policy and California law, non-exempt employees must be paid for all time spent working. An employee notified hospital management that (b) (6), (b) (7)(C) was seen working in the kitchen after hours on (b) (6), (b) (7)(C) 2019. (b) (6), (b) (7)(C) was working at the hospital for approximately 60 minutes after (b) (6), (b) (7)(C) clocked out for the day. When interviewed about this, (b) (6), (b) (7)(C) was dishonest about the time (b) (6), (b) (7)(C) spent at the hospital after (b) (6), (b) (7)(C) clocked out and also about the tasks (b) (6), (b) (7)(C) was doing after hours. (b) (6), (b) (7)(C) dishonesty was confirmed by reviewing (b) (6), (b) (7)(C) timecard and video footage of (b) (6), (b) (7)(C) leaving the hospital. (b) (6), (b) (7)(C) was not progressively disciplined about this matter. (b) (6), (b) (7)(C) was immediately discharged consistent with terms of the collective bargaining agreement. (b) (6), (b) (7)(C), who was not a union official, was treated in the same manner as (b) (6), (b) (7)(C) for proven dishonesty.

2. (b) (6), (b) (7)(C) claims that on (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) asked (b) (6), (b) (7)(C) about (b) (6), (b) (7)(C) January 22 Marshall Covid test and related paper work, never stating that Vibra had a problem with what (b) (6), (b) (7)(C) wrote on that paperwork. How does your client respond?

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<sup>1</sup> Many of the matters addressed herein substantially predate (b) (6), (b) (7)(C) termination in (b) (6), (b) (7)(C) 2021. (b) (6), (b) (7)(C) being the (b) (6), (b) (7)(C), could have certainly raised these concerns (but did not) with the NLRB at the time.

This is false. (b) (6), (b) (7)(C) told (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) needed to meet with (b) (6), (b) (7)(C) and that the conversation may lead to disciplinary action. (b) (6), (b) (7)(C) was permitted to have union representation. (b) (6), (b) (7)(C) interviewed (b) (6), (b) (7)(C) on (b) (6), (b) (7)(C) after (b) (6), (b) (7)(C) reviewed the Vibra COVID-19 screening logs, the Marshall COVID-19 test results/screening from Marshall, and (b) (6), (b) (7)(C) on-call forms. Pursuant to (b) (6), (b) (7)(C)'s investigatory notes/timeline, (b) (6), (b) (7)(C) asked (b) (6), (b) (7)(C) the following questions on (b) (6), (b) (7)(C):

1. You stated that you had onset of sx's [symptoms] on 1/19/2021 at Marshall. You signed into our screening on 1/19 and it states no for any sx's [symptoms]. Can you explain?
2. You stated on the form from Marshall that you had a positive exposure to a covid 19 patient on 1/18 and you did not indicated that for us on any screening form that I reviewed on 1/19, 1/20, 1/22, 1/24, 1/25, 1/26, 1/27 and 1/28 that you were exposed to any covid positive patients in the last 14 days. (Attachment 18)

Thus, contrary to (b) (6), (b) (7)(C)'s contention, it was clear on (b) (6), (b) (7)(C) there were serious concerns with (b) (6), (b) (7)(C)'s Vibra COVID-19 screening logs. Moreover, (b) (6), (b) (7)(C) expressly informed (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) needed to have a conversation with (b) (6), (b) (7)(C) and that it could lead to discipline. (b) (6), (b) (7)(C) contacted (b) (6), (b) (7)(C) union representative who was present by telephone doing the (b) (6), (b) (7)(C) meeting. According to (b) (6), (b) (7)(C)'s investigatory timeline, on (b) (6), (b) (7)(C):

I told (b) (6), (b) (7)(C) I need to speak with (b) (6), (b) (7)(C) and it would be an investigation, however when I walked into the room, (b) (6), (b) (7)(C) was in there. I told (b) (6), (b) (7)(C) I need to speak with (b) (6), (b) (7)(C) in private and I headed back to my office. In the hallway, (b) (6), (b) (7)(C) followed me and asked me what was the issue, I told (b) (6), (b) (7)(C) it was about the POC screening test. (b) (6), (b) (7)(C) got immediately upset and said here you go again, or something to that, (b) (6), (b) (7)(C) got (b) (6), (b) (7)(C) [SEIU Representative] on the phone. I said lets go to my office to talk.

The claim that (b) (6), (b) (7)(C) was unaware that Vibra had an issue with (b) (6), (b) (7)(C)'s Marshall COVID-19 documentation is unsupported by the facts in the record and is without merit.

3. (b) (6), (b) (7)(C) claims that Vibra did not hold an investigative meeting with (b) (6), (b) (7)(C) on (b) (6), (b) (7)(C) rather, it simply told (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) was fired and did not allow (b) (6), (b) (7)(C) to respond. How does your client respond to that claim? Do you have notes showing that (b) (6), (b) (7)(C) was allowed to defend (b) (6), (b) (7)(C) at that meeting?

Vibra's investigation into (b) (6), (b) (7)(C)'s misconduct took place prior to (b) (6), (b) (7)(C) 2021, with the investigatory meeting taking place on (b) (6), (b) (7)(C) (as described in the response to question 2 above). After the conclusion of the investigation, the meeting on (b) (6), (b) (7)(C) was held to administer discipline to (b) (6), (b) (7)(C) was permitted to submit documentation in (b) (6), (b) (7)(C) defense on numerous occasions, including on (b) (6), (b) (7)(C) and refused to do so. In fact, (b) (6), (b) (7)(C)

was specifically asked whether (b) (6), (b) (7)(C) wanted to provide any documents in support of (b) (6), (b) (7)(C) position and (b) (6), (b) (7)(C) declined. In (b) (6), (b) (7)(C) grievance decision, (b) (6), (b) (7)(C) confirms (b) (6), (b) (7)(C) refusal on (b) (6), (b) (7)(C) to provide documents in (b) (6), (b) (7)(C) defense:

**During our investigative meeting, the meeting on (b) (6), (b) (7)(C)/2021, and the grievance meeting with the union on (b) (6), (b) (7)(C) 2021 (b) (6), (b) (7)(C) had the opportunity to engage in a dialog and provide any exculpatory documents but (b) (6), (b) (7)(C) refused to do so. During our (b) (6), (b) (7)(C)/2021 meeting (b) (6), (b) (7)(C) stated several times that (b) (6), (b) (7)(C) had written statements from a supervisor at Marshall Medical Center to support (b) (6), (b) (7)(C) statements and prove that (b) (6), (b) (7)(C) was not dishonest while completing our COVID-19 screening sheets. However, (b) (6), (b) (7)(C) flat out refused to provide those statements or any other documents to support (b) (6), (b) (7)(C) version of events and/or facts. Towards the end of the meeting on (b) (6), (b) (7)(C)/2021, we explicitly asked for those documents so that we could review them but to date, no documents have been provided. (Emphasis added). (Attachment 5)**

- a. **Provide documentary evidence showing what the Employer did to investigate (b) (6), (b) (7)(C) alleged dishonesty that led to (b) (6), (b) (7)(C) termination, including but not limited to internal emails and memos concerning the Employer's decision to terminate (b) (6), (b) (7)(C)**

See Attachment 2 (Corrective Action), Attachment 3 (Marshall COVID-19 test results/screening), Attachment 4 (Vibra COVID-19 screening), Attachment 5 (Grievance Response), Attachment 7 (Corrective Action), Attachment 8 (On-Call Hours forms), Attachment 15 (COVID-19 Huddle Update), and Attachment 18 (Timeline/Investigatory Notes).

4. **(b) (6), (b) (7)(C) claims that at the (b) (6), (b) (7)(C) grievance meeting, Vibra read the (b) (6), (b) (7)(C) letter from Marshall and simply said it was irrelevant because it was from another hospital. (b) (6), (b) (7)(C) claims that at both Step 1 and Step 2 grievance meetings, Vibra did not ask (b) (6), (b) (7)(C) for any exculpatory evidence. How do you respond?**

This is false. Before this Charge, Vibra never read or was provided with a copy of the (b) (6), (b) (7)(C) letter from Marshall. (b) (6), (b) (7)(C) referenced a letter from Marshall but (b) (6), (b) (7)(C) did not read it or agree to provide a copy, despite numerous requests that (b) (6), (b) (7)(C) do so. This is confirmed in the grievance decision from (b) (6), (b) (7)(C) dated (b) (6), (b) (7)(C) (See Attachment 5). See response to question #3 above.

5. **You state that all Radiology employees were required to fill out the on call hours form. However, (b) (6), (b) (7)(C) claims that (b) (6), (b) (7)(C) was the only employee required to submit (b) (6), (b) (7)(C) form to (b) (6), (b) (7)(C) while all others submitted their forms to HR or (b) (6), (b) (7)(C) How do you respond?**

(b) (6), (b) (7)(C), worked part-time. As discussed in the August 6 Position Statement, there were issues with the accuracy and completeness of the forms from (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) supervisor was not ensuring (b) (6), (b) (7)(C) forms were correct prior to submission.

Training was provided to both (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) by Human Resources in the fall/winter 2020; however, there continued to be issues with (b) (6), (b) (7)(C) time.<sup>2</sup> As a result, on or about June 2020 (b) (6), (b) (7)(C) asked (b) (6), (b) (7)(C) to provide the forms to (b) (6), (b) (7)(C) directly only so (b) (6), (b) (7)(C) could ensure they were correct before going to payroll. The other radiology staff completed the forms correctly, thus there was no need for additional review. Moreover, (b) (6), (b) (7)(C) is unable to point to adverse employment action taken as a result of the submission of the forms to (b) (6), (b) (7)(C) and there was a legitimate business reason for doing so.

**6. You state that prior to (b) (6), (b) (7)(C) the Employer never terminated (b) (6), (b) (7)(C)**

**a. However, (b) (6), (b) (7)(C) claims that right after (b) (6), (b) (7)(C) became (b) (6), (b) (7)(C) in (b) (6), (b) (7)(C) 2019, (b) (6), (b) (7)(C) told (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) was no longer employed and not to return without giving (b) (6), (b) (7)(C) a reason. (b) (6), (b) (7)(C) claims that after being out of work for about 7 days, the Employer reinstated (b) (6), (b) (7)(C) with backpay. How do you respond?**

This is false. There was no termination of employment. Attached are (b) (6), (b) (7)(C) timesheets showing that even when (b) (6), (b) (7)(C) was a per diem employee, (b) (6), (b) (7)(C) worked nearly every day from (b) (6), (b) (7)(C) 2019 through (b) (6), (b) (7)(C) 2019. There is not a seven (7) day gap where (b) (6), (b) (7)(C) did not work or was suspended in (b) (6), (b) (7)(C) 2019. (Attachment 19).

To the extent (b) (6), (b) (7)(C) is referring to an incident in (b) (6), (b) (7)(C) 2019, (b) (6), (b) (7)(C) was placed on an unpaid administrative leave pending the results of an investigation for “escalating, aggressive, and erratic behavior.” Through the grievance process, a settlement was reached. (b) (6), (b) (7)(C) was permitted to return to work with back pay and the disciplinary action was reduced from a written warning to a verbal warning. (Attachment 20) (Attachment 21) (Attachment 26). This incident was in no way related to (b) (6), (b) (7)(C) role as (b) (6), (b) (7)(C) and was brought about by numerous co-worker complaints about concern for their safety resulting from (b) (6), (b) (7)(C) escalating aggressive behavior.

**b. (b) (6), (b) (7)(C) claims that at (b) (6), (b) (7)(C) 2020 or (b) (6), (b) (7)(C) 2021, (b) (6), (b) (7)(C) told (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) employment was over due to (b) (6), (b) (7)(C) behavior at a Mercy Health medical appointment. After a few days, the Employer reinstated (b) (6), (b) (7)(C) because it determined that (b) (6), (b) (7)(C) was not representing the Employer or working on the clock when (b) (6), (b) (7)(C) was at Mercy Health. How do you respond?**

This is false. There was no termination of employment. The incident with (b) (6), (b) (7)(C) inappropriate behavior and subsequent ban from Mercy is detailed in the August 6 Position Statement; however, (b) (6), (b) (7)(C) was never terminated/reinstated due to (b) (6), (b) (7)(C) misconduct at Mercy.

To the extent (b) (6), (b) (7)(C) is referring to a (b) (6), (b) (7)(C) matter, on (b) (6), (b) (7)(C) 2020, (b) (6), (b) (7)(C) was placed on (b) (6), (b) (7)(C) leave because Vibra could not reasonably accommodate (b) (6), (b) (7)(C) (Attachment 22). (b) (6), (b) (7)(C) could not perform the essential

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<sup>2</sup> In fact, (b) (6), (b) (7)(C) was on a Performance Improvement Plan for, among other things, managing (b) (6), (b) (7)(C) employees' timesheets.



functions of the (b) (6), (b) (7)(C) positions as outlined in the job descriptions. (Attachment 23) (Attachment 24). (b) (6), (b) (7)(C) had restrictions on standing, walking, sitting, bending, twisting, lifting, carrying, pushing, and pulling. (Attachment 22). For example, (b) (6), (b) (7)(C) was required as an essential function of (b) (6), (b) (7)(C) job to frequently lift up to 50 lbs. The occupational health physician (b) (6), (b) (7)(C). In addition, (b) (6), (b) (7)(C) would be unable to perform CPR on a patient because (b) (6), (b) (7)(C) would be unable to do chest compressions due to (b) (6), (b) (7)(C) pushing restrictions; thus, demonstrating the need for (b) (6), (b) (7)(C) to be placed on a leave of absence until (b) (6), (b) (7)(C) medical restrictions were modified or lifted. (b) (6), (b) (7)(C) modified duty request was handled in the same manner as all workers' compensation injuries and was in no way punitive in nature. Upon receipt of an updated medical note on (b) (6), (b) (7)(C) 2020, Vibra permitted (b) (6), (b) (7)(C) to return to work. (b) (6), (b) (7)(C) did not receive any loss of pay relating to (b) (6), (b) (7)(C) leave of absence and the union did not file a grievance.

- c. You state that the Employer had the right to terminate (b) (6), (b) (7)(C) immediately. However, (b) (6), (b) (7)(C) was an (b) (6), (b) (7)(C) employee that was not on a last chance agreement. Please explain why the Employer decided to terminate (b) (6), (b) (7)(C) immediately even though there may be different reasonable interpretations of the questions on the form.**

A thorough investigation was completed and it was determined that (b) (6), (b) (7)(C) was dishonest about a very important safety issue. (b) (6), (b) (7)(C) attempted to muddy the waters but the underlying conduct and subsequent dishonesty is clear. Vibra did, in fact, consider (b) (6), (b) (7)(C) responses and defenses and it continues to be the position of Vibra that (b) (6), (b) (7)(C) explanation is without merit and (b) (6), (b) (7)(C) dishonesty cannot be refuted. (b) (6), (b) (7)(C) raised the defense during the investigation that the definition of exposure to a COVID-19 patient varies between Marshall and Vibra. This was considered and determined to be without merit. The definition of exposure is defined by the CDC and CA state guidelines. Moreover, it was discussed during numerous COVID huddles that if there was any question regarding exposure to a COVID-19 positive patient, employees were to raise them with the hospital Infection Prevention nurse, the Chief Clinical Officer, or the CEO. (b) (6), (b) (7)(C) never inquired about (b) (6), (b) (7)(C) nor did (b) (6), (b) (7)(C) raise any questions or concerns like (b) (6), (b) (7)(C) was instructed.

The symptoms of COVID-19 are universal. (b) (6), (b) (7)(C) cannot dispute the fact that (b) (6), (b) (7)(C) never informed Vibra of the COVID-19 symptoms of which (b) (6), (b) (7)(C) informed Marshall (b) (6), (b) (7)(C) had experienced beginning on 1/19. The following undisputed facts confirm (b) (6), (b) (7)(C) dishonesty:

- (b) (6), (b) (7)(C) reported to work at Vibra from 1/18 through 1/22 (not disputed)
- (b) (6), (b) (7)(C) indicated to Vibra on a daily basis from 1/18 through 1/22 that (b) (6), (b) (7)(C) had no symptoms or exposure (not disputed)
- (b) (6), (b) (7)(C) indicated to Marshall on 1/22 that (b) (6), (b) (7)(C) was experiencing symptoms beginning on 1/19 and was exposed to a positive patient on 1/18 (not disputed)
- (b) (6), (b) (7)(C) did not know (b) (6), (b) (7)(C) was COVID-19 negative until the test results from Marshall on 1/22 (not disputed)

An employee need not be on a last chance agreement to be discharged according to the terms of the collective bargaining agreement. Furthermore, (b) (6), (b) (7)(C) failed to exhaust (b) (6), (b) (7)(C) contractual remedies by failing to appeal (b) (6), (b) (7)(C) discharge through arbitration provided for in the collective bargaining agreement.

7. (b) (6), (b) (7)(C) states that prior to becoming a (b) (6), (b) (7)(C) on about (b) (6), (b) (7)(C) 2019, the Employer never disciplined or harassed (b) (6), (b) (7)(C). Did the Employer ever discipline (b) (6), (b) (7)(C) before (b) (6), (b) (7)(C) became (b) (6), (b) (7)(C)? Please submit (b) (6), (b) (7)(C) personnel record, including but not limited to, (b) (6), (b) (7)(C) entire disciplinary and work evaluation history.

Prior to becoming a (b) (6), (b) (7)(C) in (b) (6), (b) (7)(C) 2019 (b) (6), (b) (7)(C) was a per diem employee. (b) (6), (b) (7)(C) changed to fulltime status on (b) (6), (b) (7)(C) 2020. (b) (6), (b) (7)(C) would primarily come in for call back and not cover many regular shifts. (b) (6), (b) (7)(C) was coached several times about the way (b) (6), (b) (7)(C) talked to other employees and management. (b) (6), (b) (7)(C) received a verbal coaching in (b) (6), (b) (7)(C) 2016 for rude and condescending behavior. (Attachment 26). During the course of (b) (6), (b) (7)(C) employment with Vibra, (b) (6), (b) (7)(C) never took any allegations of retaliation to arbitration as permitted through the collective bargaining agreement. (b) (6), (b) (7)(C) personnel file and disciplinary file are attached. (Attachment 25) (Attachment 26).

8. On (b) (6), (b) (7)(C) 2020, (b) (6), (b) (7)(C) texted (b) (6), (b) (7)(C) instructing (b) (6), (b) (7)(C) to not do any patient care and to report to (b) (6), (b) (7)(C) office. (b) (6), (b) (7)(C) failed to tell (b) (6), (b) (7)(C) why (b) (6), (b) (7)(C) was not able to perform patient care. In the same text messages, (b) (6), (b) (7)(C) told (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) needed to speak to (b) (6), (b) (7)(C) about (b) (6), (b) (7)(C) “work status among other things.” Why did (b) (6), (b) (7)(C) tell (b) (6), (b) (7)(C) not to do patient care that day? What did (b) (6), (b) (7)(C) have to speak to (b) (6), (b) (7)(C) about regarding (b) (6), (b) (7)(C) “work status,” did that conversation ever take place, and what occurred during that conversation?

This is related to the workers’ compensation leave of absence addressed in the response to question 6(b) above. On (b) (6), (b) (7)(C) 2020, Vibra first learned that (b) (6), (b) (7)(C) had been placed off work by the Occupational Health physician beginning (b) (6), (b) (7)(C) 2020. (b) (6), (b) (7)(C) failed to inform Vibra of (b) (6), (b) (7)(C) work restrictions and continued to work from December 15-18 contrary to medical advice. When Vibra first learned of (b) (6), (b) (7)(C) restrictions on (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) was informed that (b) (6), (b) (7)(C) was being placed on a leave of absence effective immediately. Nevertheless, (b) (6), (b) (7)(C) reported to work on (b) (6), (b) (7)(C) and had to be sent home.

On (b) (6), (b) (7)(C) 2020, (b) (6), (b) (7)(C) spoke with (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) union representative to discuss (b) (6), (b) (7)(C) medical restrictions (of which (b) (6), (b) (7)(C) just learned earlier that day) and (b) (6), (b) (7)(C) ability to perform the essential functions of (b) (6), (b) (7)(C) job. As a result, (b) (6), (b) (7)(C) was placed on a leave of absence until such time as (b) (6), (b) (7)(C) medical restrictions were changed. (b) (6), (b) (7)(C) was returned to full duty on (b) (6), (b) (7)(C) 2020, upon receipt of updated medical documentation allowing (b) (6), (b) (7)(C) to perform the essential functions of his position.

For the legal and factual reasons set forth herein, the Charge is without merit and Vibra respectfully requests that the Charge be dismissed in its entirety.

Sincerely,

VIBRA HOSPITAL OF SACRAMENTO

By: 

Tara DiRocco Gryan



**RE:**

***Attachments to Vibra's Supplemental Position Statement  
August 19, 2021  
Vibra Hospital of Sacramento  
Case 20-CA-280184***

Attachment 18	Termination Investigatory Timeline/Notes (b) (6), (b) (7)(C) -21)
Attachment 19	Time Sheet Report (5-2019)
Attachment 20	Email (b) (6), (b) (7)(C) Re: Administrative Unpaid Suspension (b) (6), (b) (7)(C) -2019)
Attachment 21	(b) (6), (b) (7)(C) Suspension Grievance and supporting documents (b) (6), (b) (7)(C) -2019)
Attachment 22	Email (b) (6), (b) (7)(C) Re: Modified Duty (b) (6), (b) (7)(C) 2020)
Attachment 23	Job Description – (b) (6), (b) (7)(C)
Attachment 24	Job Description – (b) (6), (b) (7)(C)
Attachment 25	Personnel File (b) (6), (b) (7)(C)
Attachment 26	Disciplinary File (b) (6), (b) (7)(C)

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September 7, 2021

**VIA EMAIL -** [jason.wong@nlrb.gov](mailto:jason.wong@nlrb.gov)

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**RE: Vibra Hospital of Sacramento  
Case 20-CA-280184**

Dear Mr. Wong:

I write in response to the questions asked in your email of September 2, 2021.

1. **Attachment 18 of your last position statement are supposedly** (b) (6), (b) (7)(C) **“timeline of events,” including** (b) (6), (b) (7)(C) **notes concerning** (b) (6), (b) (7)(C) **meeting with** (b) (6), (b) (7)(C) **a.** **But there is nothing showing when the timeline and notes were created. Were they created after the Board charge was filed? When did** (b) (6), (b) (7)(C) **create these notes? Are there any other documents or digital timestamp to confirm when the timeline and notes were created?**
- b. Who's handwriting is on pages 3 - 6 of attachment 18 and when were those handwritten notes created?**

Attachment 18 consists of the hard copy file created by (b) (6), (b) (7)(C) related to Vibra's investigation and eventual termination of (b) (6), (b) (7)(C). The final timeline created by (b) (6), (b) (7)(C) is located at pages 1-2. Pages 3-6 consist of earlier drafts (evidenced by the fact that they include handwritten comments). The documents were not created or altered after the fact or in response to this Charge. According to the document properties provided in Microsoft Word, the timeline was first created on (b) (6), (b) (7)(C) 2021 and was last modified on (b) (6), (b) (7)(C) 2021 (prior to the (b) (6), (b) (7)(C) termination). The handwriting found at pages 3, 4, and 6 belongs to (b) (6), (b) (7)(C) and represents edits (b) (6), (b) (7)(C) was making to the final timeline. The handwriting found at page 5 belongs to the hospital (b) (6), (b) (7)(C), and represents (b) (6), (b) (7)(C) comments and proposed revisions. (b) (6), (b) (7)(C) relied upon (b) (6), (b) (7)(C)' completed timeline in making the decision to terminate (b) (6), (b) (7)(C). Digital timestamp of (b) (6), (b) (7)(C)' timeline (Attachment 30).

2. Did the Company interview (b) (6), (b) (7)(C) supervisor, (b) (6), (b) (7)(C), about whether (b) (6), (b) (7)(C) displayed any COVID symptoms at work on January 19? If not, why?

(b) (6), (b) (7)(C) was not asked. Vibra already had confirmation from Marshall that (b) (6), (b) (7)(C) was COVID-19 negative when Vibra began its investigation. The issue was not whether (b) (6), (b) (7)(C) was symptomatic while at work. (b) (6), (b) (7)(C) was terminated for (b) (6), (b) (7)(C) dishonest behavior, which was proven during the investigation by the undisputed fact that (b) (6), (b) (7)(C) provided inconsistent answers on the COVID-19 screening forms for Vibra and Marshall. Additionally, (b) (6), (b) (7)(C) never reported having a preexisting condition, such as allergies, to the Infection Preventionist, as all hospital staff were instructed to do in the beginning of the pandemic.

3. You claimed that “all employees who were on call and came into work were required to complete a handwritten On-Call Hours form to ensure correct pay,” and that “on about (b) (6), (b) (7)(C) 2020 (b) (6), (b) (7)(C) asked (b) (6), (b) (7)(C) to provide the forms to (b) (6), (b) (7)(C) directly only so (b) (6), (b) (7)(C) could ensure they were correct before going to payroll.” However, (b) (6), (b) (7)(C) claims that (b) (6), (b) (7)(C) never told (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) filled out the forms incorrectly. (b) (6), (b) (7)(C) also asserts that (b) (6), (b) (7)(C) was the only radiology employee who had to submit handwritten time cards weekly. (b) (6), (b) (7)(C) claims that (b) (6), (b) (7)(C) coworkers (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) were not required to submit handwritten time cards, like (b) (6), (b) (7)(C) was.

- a. To support your claim, you provided a copy of (b) (6), (b) (7)(C) June 6, 2021 time card. But only one timecard was provided, that time card post-dates (b) (6), (b) (7)(C) termination, and (b) (6), (b) (7)(C) is a supervisor. Hence, please provide copies of the handwritten time cards that (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) submitted every week from October 2020 - January 2021.

(b) (6), (b) (7)(C), a per diem employee, has been on a medical leave of absence since November 10, 2020. Accordingly, (b) (6), (b) (7)(C) does not have On-Call Hours forms past October 22, 2020. (b) (6), (b) (7)(C) Leave of Absence Form (Attachment 27). (b) (6), (b) (7)(C) handwritten On-Call Hours forms from October 3, 2020 to October 22, 2020 (Attachment 28). (b) (6), (b) (7)(C) handwritten On-Call Hours forms from October 20, 2020 to January 23, 2021 (Attachment 29).

- b. Provide any emails or documents showing that (b) (6), (b) (7)(C) told (b) (6), (b) (7)(C) to submit (b) (6), (b) (7)(C) time cards to (b) (6), (b) (7)(C) because (b) (6), (b) (7)(C) was not completing them properly.

A discussion took place between (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) after (b) (6), (b) (7)(C) complained of not being paid correctly for (b) (6), (b) (7)(C) on-call hours. (b) (6), (b) (7)(C) agreed to submit (b) (6), (b) (7)(C) On-

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<sup>1</sup> (b) (6), (b) (7)(C) legal name is (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) legal name is (b) (6), (b) (7)(C).

Call Hours forms to Human Resources.<sup>2</sup> This process seemed to remedy the on-call pay errors (b) (6), (b) (7)(C) had been experiencing prior.

To the extent (b) (6), (b) (7)(C) is referring to Time Off Request forms (and not On-Call Hours forms), (b) (6), (b) (7)(C) submitted a copy of (b) (6), (b) (7)(C) Time Off Request forms to (b) (6), (b) (7)(C) because (b) (6), (b) (7)(C) was (b) (6), (b) (7)(C) supervisor when (b) (6), (b) (7)(C) (who worked part time) was not there. This was done so (b) (6), (b) (7)(C) knew when (b) (6), (b) (7)(C) was supposed to be at work and when (b) (6), (b) (7)(C) had approved PTO. As a fulltime employee, (b) (6), (b) (7)(C) was the only radiology employee who had PTO. (b) (6), (b) (7)(C) did not regularly approve or deny (b) (6), (b) (7)(C) Time Off Requests, because that was done by (b) (6), (b) (7)(C).

Based on the above information in addition to the information previously supplied, I respectfully request that the Regional Director dismiss this Charge in its entirety at the earliest possible time.

Sincerely,

VIBRA HOSPITAL OF SACRAMENTO

By   
Tara DiRocco Gryan

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<sup>2</sup> In the prior Position Statements it was stated that (b) (6), (b) (7)(C) submitted (b) (6), (b) (7)(C) On-Call Hours forms directly to (b) (6), (b) (7)(C) so that (b) (6), (b) (7)(C) would be paid correctly. (b) (6), (b) (7)(C) On-Call Hours forms were submitted to Human Resources to fix the errors with (b) (6), (b) (7)(C) pay and not directly to (b) (6), (b) (7)(C).

**RE:**                      ***Attachments to Vibra's Second Supplemental Position Statement  
September 7, 2021  
Vibra Hospital of Sacramento  
Case 20-CA-280184***

Attachment 27	(b) (6), (b) (7)(C)	Leave of Absence Form 11/10/20
Attachment 28	(b) (6), (b) (7)(C)	On-Call Hours Forms (10/3/20 to 10/22/20)
Attachment 29	(b) (6), (b) (7)(C)	On-Call Hours Forms (10/20/20 to 01/23/21)
Attachment 30	Timestamp (b) (6), (b) (7)(C)	Timeline



UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD

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September 17, 2021

Tara D. Gryan, Labor & Employment Counsel  
4600 Lena Drive  
Mechanicsburg, PA 17055

Re: Vibra Hospital  
Case 20-CA-280184

Dear Ms. Gryan:

This is to advise you that I have approved the withdrawal of the charge in the above matter.

Very truly yours,

/s/ Daniel Owens

DANIEL J. OWENS  
Acting Regional Director

cc: Vibra Hospital  
330 Montrose Drive  
Folsom, CA 95630

(b) (6), (b) (7)(C)

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